

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:

DAVID MICHAEL MOBLEY

Debtor.

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Case No. 22-60004

Chapter 11

DEBTOR'S MOTION TO DISMISS CASE

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

TO THE HONORABLE U.S. BANKRUPTCY COURT:

David Michael Mobley (the “*Debtor*”) hereby files this Motion to Dismiss Case.

Factual and Procedural Background

1. The Debtor filed this case on January 21, 2022.
2. The Court denied the Debtor’s Subchapter V election on June 1, 2022. At that time, the Court indicated that it would entertain a motion to dismiss the case if requested by the Debtor.
3. The main creditor that has been active in this case is Quality Lease and Rental Holdings, LLC, et al (“QLRS”) which has filed an unliquidated claim for \$62,700,000. The claim is based upon a suit which has been pending in the U.S. District Court for the Southern District of Texas, Victoria since 2016 which originated as an adversary proceeding in the bankruptcy

proceeding of QLRS in 2014. The suit alleged claims against the Debtor and nine non-debtor parties. However, the only claims remaining are those against the Debtor and QLS Holdco, Inc. The case was set for trial on January 24, 2022 but was stayed by the bankruptcy filing.

4. The Debtor is unable to propose a confirmable plan until such time as the claim of QLRS is liquidated. If the claim is allowed in the full amount alleged, the Debtor will be unable to satisfy the absolute priority rule. Given that the QLRS claim is somewhere between \$0 and \$62,700,000, there is substantial uncertainty as to Debtor's ability to propose a confirmable plan prior to liquidation of the claim.

Argument and Authorities

5. Under 11 U.S.C. §1112(b)(1), the court shall convert the case to chapter 7 or dismiss the case for cause shown, "whichever is in the best interests of creditors and the estate."

6. "Cause" includes "failure to file a plan and disclosure statement, or to file and confirm a plan within the time fixed by this title or by order of the court." The Court had previously fixed a deadline to file a plan by April 21, 2022, which was extended to June 30, 2022. However, that deadline was superseded when the Subchapter V election was denied. Although the Court has not set a new deadline to file a plan, the Debtor's exclusive period to file a plan has expired.

7. Dismissal is in the best interests of creditors and the estate for the reason that there would be only a nominal distribution to unsecured creditors. Most of the assets of the estate are encumbered by liens or have been claimed as exempt. While there is an objection pending to Debtor's homestead exemption, there is no guarantee that this objection will be successful.

8. As shown by the docket in this case, this is largely a two-party dispute between the Debtor and QLRS. The most efficient solution would be to allow the Debtor and QLRS to

litigate their claims in U.S. District Court. Debtor acknowledges that his bankruptcy filing stopped the prior setting in this case from going forward. Therefore, Debtor is willing to agree to dismissal with prejudice for 180 days to allow this suit to go forward.

Respectfully submitted,

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By: /s/Stephen W. Sather
Stephen W. Sather
State Bar No. 17657520

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that I served the above and foregoing Motion on the parties listed on the attached matrix on this the 12th day of September 2022.

/s/Stephen W. Sather
Stephen W. Sather

Label Matrix for local noticing
0541-6
Case 22-60004
Southern District of Texas
Victoria
Fri Jul 29 13:32:03 CDT 2022

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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)MATAGORDA ISD

(u)People's United Equipment Finance

End of Label Matrix
Mailable recipients 51
Bypassed recipients 2
Total 53